Conference on Disarmament

4 September 2018

English only

Subsidiary Body 2: Prevention of nuclear war, including all related matters

Report

1. By decision CD/2119 of 19 February 2018, the Conference on Disarmament established five subsidiary bodies with a view to make progress on its agenda items. It was agreed that Subsidiary Body 2 would deal with the prevention of nuclear war, including all related matters. In accordance with the timetable annexed to decision CD/2126 of 27 March 2018, it was further agreed that the general focus of Subsidiary Body 2 would be on the ban of the production of fissile materials for nuclear weapons and other nuclear explosive devices. An understanding was also reached that at least one meeting of the Subsidiary Body would be devoted to matters other than the ban of the production of fissile materials for nuclear weapons and other nuclear devices that fall in the purview of the prevention of nuclear war, including all related matters.

2. This report reflects the discussions that took place in this body pursuant to its mandate. It acknowledges the deep divergences of views on the different issues.

- Part I reflects the discussions on the part with the general focus on the ban of the production of fissile materials for nuclear weapons and other nuclear explosive devices.
    - Part I. A reflects the technical discussions held with a view to broadening areas of agreement.
    - Part I. B reflects the discussion on the consideration of effective measures, including legal instruments for negotiations.
- Part II reflects the discussion on the 'prevention of nuclear war, including all related matters' and focuses on matters other than the ban of the production of fissile materials for nuclear weapons and other nuclear explosive devices. The discussion mainly featured the issue of nuclear risk reduction.
- Part III identifies possible areas of further work on the basis of the discussions in Subsidiary Body 2.

3. Subsidiary Body 2 benefited from the participation of two experts, namely Dr Pavel Podvig, Programme Lead at the United Nations Institute for Disarmament Research, and Sico van der Meer, Research Fellow at the Netherlands Institute of International Relations 'Clingendael'. Dr Podvig presented 'an overview of activities conducted with a general focus on the ban of the production of fissile materials for nuclear weapons and other nuclear explosive devices' and was present to provide expertise at the sessions. Mr van der Meer gave a presentation at the 29 June session on 'reducing nuclear weapons risks: 11 policy options'.

I. Part I.

A. Technical discussions

General

4. Delegations expressed their views on a ban of the production of fissile materials for nuclear weapons and other nuclear explosive devices. They stated that a treaty should be non-discriminatory, multilateral and internationally and effectively verifiable. It should practically contribute to nuclear non-proliferation and disarmament objectives bearing in mind paragraph 50 (b) of the final outcome document of SSOD-I and lead to undiminished security for all states with a view to promoting or enhancing stability at a lower military level, taking into account the need of all states to protect their security. It should be effective, practical, and flexible to allow for future developments. Such a treaty remains particularly valuable as an effective measure relating to nuclear disarmament and non-proliferation, and also a means to build trust and confidence among states.

5. Some delegations stated that transparency and confidence-building measures (TCBMs) outside a treaty can be valuable tools. Others stated that TCBMs in themselves, however, are not a substitute for a legally-binding instrument, i.e. a treaty. Delegation expressed that a treaty should not prohibit all production of fissile materials, such as that for civilian use or other non-proscribed uses. Non-diversion of fissile material to nuclear weapons or other nuclear explosive devices should be ensured. It is important to determine a clear object and purpose for this treaty in considering effective measures. The obligations under a treaty should be in line with the principle of non-discrimination. Important aspects include definitions, verification, and institutional and legal arrangements, which are all interlinked with each other and with the objective and scope of the treaty. The most appropriate international forum to negotiate a treaty is the Conference on Disarmament.

Definitions

6. Delegations expressed their views on the issue of definitions. At the outset, a delegation placed the caveat that discussions on elements of a treaty such as verification, definitions and legal and institutional arrangements are premature as long as there is no full clarity and common vision on the treaty's objective and scope because of the close interlinkages.

7. Delegations stated a treaty should define, inter alia, fissile material, fissile material production; and should clearly delineate the facilities relevant for such an treaty. Definitions will have an impact on the scope, and means and methods of verification. Definitions should ensure that the object and purpose of a treaty can be effectively met.

Scope

8. Delegations expressed their views on the scope of a treaty. Some delegations insisted that the treaty should only focus on banning the future production of fissile material. According to them, the Shannon Report and the mandate contained therein (CD/1299 (1995)), which was agreed by consensus, remains the most relevant and valid basis for conducting negotiations in the Conference on Disarmament on such a treaty. The point was made that therefore there was no need for a new mandate. These delegations called for the immediate commencement of negotiations in the Conference on Disarmament of a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices on the basis of CD/1299 and the mandate contained therein.

9. Other delegations indicated that they were more flexible in terms of scope, whilst a treaty banning future production was the minimum. According to these delegations, a distinction was made with regard to the different categories of existing stocks of fissile materials and some of those categories could be included either as part of the same instrument or in a different arrangement. Also suggestions were made by some delegations as to how to deal with the different categories, such as subjecting some of them only to

verification and not necessarily reduction, whether voluntary or not. According to these delegations, the Shannon Report and the mandate contained therein left sufficient 'constructive ambiguity' as to whether stocks were included in the scope or not.

10. Yet other delegations insisted that the treaty's scope should include future as well as past production of fissile materials for nuclear weapons and other nuclear explosive devices. Depending on the category of stocks, they should be subject to the treaty and should either be reduced and/or put under verification. For some of these delegations the Shannon Report and the mandate contained therein were the basis for negotiations as it did not exclude existing stocks, whilst a delegation also expressed the view that the Shannon Report and the mandate contained therein has outlived its utility and validity as the basis for substantive work on a ban as it does not explicitly cover existing stocks. It therefore was argued, by this delegation, that a new mandate was needed.

11. The view was further expressed that the issue of scope and objective of the treaty needs to be addressed prior to starting any negotiations, whilst others were of the view that issue of scope could be addressed as part of the negotiations.

12. Some delegations found it useful to distinguish between different functional categories of fissile materials as the specific views on how to deal with each category could be better expressed. A number of different functional categories were mentioned, such as, fissile materials:

(a) in civilian use;

(b) in nuclear weapons;

(c) in nuclear weapon related activities;

(d) designated as excess to nuclear weapon requirements;

(e) released as a result of individual, bilateral or multilateral disarmament arrangements;

(f) in, or reserved for, non-proscribed military use.

13. In terms of the functional categorisation of fissile materials, a delegation indicated that the concept of 'excess material' may confer legitimacy to the continued acquisition and production of nuclear weapons contrary to nuclear disarmament commitments. Also, some delegations preferred a smaller number of functional categories as adequate for the discussions.

14. There was general agreement that civilian uses and non-proscribed military uses of fissile materials should not be subject to a prohibition. However, the point was made that mechanisms should be put in place to ensure non-diversion of such materials to nuclear weapons and other nuclear explosive devices. Delegations argued that such arrangements should take into account the concerns of states regarding sensitive information. A broad range of views on the issue of international transfers / acquisition of fissile materials for nuclear weapons and other nuclear explosive devices was further expressed by some delegations. Some of them were of the view that such transfers /acquisition go against the purpose of such a treaty, while others argued that if a prohibition on transfers / acquisition is included in the scope of a treaty, logic would demand that the treaty necessarily had to deal with existing stocks.

15. Delegations also discussed how far the treaty could contribute to non-proliferation and disarmament objectives. Some delegations were of the view that the treaty should mainly focus on non-proliferation. Others stressed that it should explicitly be part of the nuclear disarmament regime. For them it was therefore important that at least some of the categories of existing stocks were included in the scope of the treaty. Also, it was mentioned that a treaty that does not encompass stocks of fissile materials within its scope, will not prevent vertical and horizontal proliferation. Others mentioned that the treaty would still cap any future production and hence have a non-proliferation value. Still other delegations expressed the view that a treaty that only deals with future production would also benefit nuclear disarmament because of the possible transparency and verification measures attached to it. (Initial) declarations in this context could also be helpful for future

nuclear disarmament arrangements, it was argued. It was also suggested that the treaty could include a mechanism whereby fissile material resulting from future nuclear disarmament arrangements be made subject to its verification regime to ensure irreversibility.

Verification

16. Several approaches to verification were considered by delegations. Some delegations favoured a focused approach to verification concentrating on enrichment and reprocessing facilities, and downstream facilities processing or handling fissile material. Others argued for a comprehensive approach covering the entire nuclear fuel cycle. Another group of delegations outlined the advantages of a hybrid approach, focusing systematic verification on those areas of the nuclear fuel cycle where the degree of attractiveness for misuse is highest, should a party seek to violate its treaty obligations, but also applying lighter touch measures to other fuel cycle activities taking into account the risks that they may pose for treaty objectives. Advantages and disadvantages of the different approaches were discussed. In that context some delegations mentioned the need for balance between resource efficiency and effectiveness. Also, some delegations expressed the view that duplication with existing safeguards mechanisms and obligations should be avoided. The importance of verification provisions being non-discriminatory was also emphasised.

17. Some delegations noted that the focus of requirements on verification would fall on states with unsafeguarded facilities, as comprehensive safeguards agreements as contained in INFCIRC/153 corrected, and for the relevant states their additional protocols to it, address important aspects of this issue for non-nuclear weapon states under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). It was also argued that additional measures may still be needed for those latter states. Also, some delegations that are State Party to the NPT expressed the view that provisions of a future treaty should be consistent with existing legal obligations, in particular the NPT.

18. The importance of addressing concerns of states regarding sensitive information in the context of verification was discussed. Delegations stated that a verification regime should take into account the non-proliferation and commercial concerns of States Parties regarding sensitive information and ensure its confidentiality. Some delegations referred to the concept of deferred verification, a 'black box' approach, and forms of managed access to deal with this issue. The point was also made that sensitivities with regard to intellectual property and trade information should also be taken into account.

19. Some delegations expressed the view that the verification toolbox should include routine as well as non-routine inspections. Material accountancy was mentioned as a possible verification measure. Some delegations also addressed the verification of transfers and the importance of declarations in that regard.

20. Delegations voiced their preferences concerning the body that should be tasked with verification. Some delegations preferred a main role for the International Atomic Energy Agency (IAEA) on verification of a future treaty, whilst others preferred setting up a new body tasked with verification without excluding the possibility of drawing on some IAEA resources.

21. The view was expressed that further technical and scientific examination of areas related to verification are merited in a manner that complements, and not duplicates, work ongoing in other initiatives. The following areas were specified in that regard: 1) technical challenges to verification, 2) mapping out how verification would work in practice under various models, and 3) assessing the resource implications of verification and institutional models. It was also argued that further work on categorisation of production facilities was helpful in order to determine a suitable approach to verification. Although in favour of further scientific work, the point was made that this could be initiated as part of the negotiations of a treaty and did not need to be conducted prior.

Institutional arrangements

22. Delegations were of the view that institutional arrangements will help ensure credibility of the treaty within the international community by inter alia facilitating

effective implementation in order to achieve the object and purpose of such a treaty. Effective institutional arrangements and governance mechanisms will enable set objectives to be met.

B. Consideration of effective measures

23. Many delegations indicated that they were ready to begin negotiations of a treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices without delay. The view was also expressed that such a treaty should be negotiated as part of a comprehensive and balanced Programme of Work of the Conference on Disarmament. Some delegations expressed that entry-into-force provisions should guarantee that all states with relevant capabilities accede to the treaty.

24. The role and usefulness of TCBMs were also extensively discussed. According to some delegations TCBMs could be valuable in preparing for negotiations, during negotiations and as part of a legally-binding instrument. These did not need to be mutually exclusive. They could help create a climate of trust and confidence. Delegations mentioned a number of examples of what they viewed as TCBMs, although not exhaustive, such as voluntary offer agreements, moratoria on fissile material production for nuclear weapons or other nuclear explosive devices, irreversible dismantling of fissile material facilities, unilateral declarations, and other forms of information sharing. Some delegations found them useful, although not a substitute for a legally-binding instrument. Others specifically voiced their concern that they were not verifiable or irreversible, hence they were of little value. The voluntarily declared unilateral moratoria on fissile material production for nuclear weapons and other nuclear explosive devices were also mentioned in that context. The view was also expressed that they would be a disincentive to negotiate a legally-binding instrument in the first place. The lack of clarity on the scope of such moratoria was also an issue, according to some delegations.

II. Part II: Prevention of nuclear war and other related matters

25. After a presentation by the expert Sico van der Meer on policy options related to reducing nuclear weapons risks, delegations discussed the relevance of this topic for further discussion in the Conference on Disarmament. Many delegations welcomed further discussions on this topic, in particular with a view to current developments in the international security environment. Some delegations expressed the view that further discussions on the security environment and how to improve it may also contribute to nuclear risk reduction. Some delegations pointed to the need to narrow down the scope of possible nuclear risk reduction measures to be discussed, whilst others emphasised the need to better define risks by category and then to define the tools in the toolbox to deal with the respective risks.

26. Amongst others, a number of policy options were mentioned by some delegations and their relevance was discussed: training for nuclear weapons-related emergencies, increased transparency, improving communications, de-targeting, increasing the security of launching systems, de-alerting, increasing decision time, raising the threshold for use including statements on 'no first use' of nuclear weapons, eliminating certain types, limiting numbers and locations, and nuclear disarmament itself. Elaborating on the latter, according to some delegations, the only way to eliminate this risk is by achieving the complete elimination of nuclear weapons.

27. Some delegations also raised the issue of nuclear deterrence and how to deal with this in the context of nuclear risk reduction. It was argued by some delegations that nuclear deterrence is obsolete and runs contrary to obligations and commitments to achieve nuclear disarmament. The importance of strategic stability or balance was also mentioned by some delegations, including in relation to general and complete disarmament. The importance of multilateralising the issue of nuclear risk reduction and having a discussion on risks associated with new technologies was also mentioned.

III. Part III: Possible areas of further work

28. During the sessions of Subsidiary Body 2 possible areas of further work of this body were discussed. In relation to the topic of 'the ban of the production of fissile materials for nuclear weapons and other nuclear explosive devices', the value of further work was emphasised. Some delegations suggested work on treaty elements, for instance on the technical and scientific aspects, scope, definitions, verification and legal and institutional arrangements or TCBMs.

29. In relation to the topic of prevention of nuclear war, including all related matters, also encompassing 'nuclear risk reduction', delegations agreed that further discussion on this topic in the Conference on Disarmament was welcome.